U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF UCE-C-

DATE: APR. 4, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, which describes itself as an education business, seeks to employ the Beneficiary as an instructional coordinator. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director determined that the Petitioner had not made a valid offer of full-time employment. The Director also determined that the Petitioner willfully misrepresented a material fact and invalidated the labor certification.

The matter is now before us on appeal. The Petitioner submits additional evidence and asserts that the Director's decision is in error because it submitted independent, objective evidence that establishes that a *bona fide* job offer existed. Upon *de novo* review, we will dismiss the appeal.

I. PROCEDURAL HISTORY

The instant petition was filed on March 4, 2011, and as required by statute, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).[1] The priority date of the petition is December 27, 2010.[2]

On July 25, 2013, United States Citizenship and Immigration Services (USCIS) officers performed a site visit at the Petitioner's place of business. The officers noted that during the site visit the company owner stated that the Beneficiary had worked there part-time during school months and full-time in the summer, but that he no longer worked for them because she was not financially able to pay him and that she let him go. The officers noted that the company owner repeatedly stated during the site visit that she intended to rehire the Beneficiary once he receives his green card. The

[1] *See* § 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).
[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

officers reported that the company owner told them that she and the Beneficiary were friends, that their children were friends, and that she just wanted to help him out by getting his green card and then have him work for her.

On September 30, 2014, the Director issued a notice of intent to deny the petition, informing the Petitioner of the site visit findings. The Director stated that the circumstances indicated the possibility of fraud or misrepresentation in the filing of the petition and labor certification. The Director's notice of intent to deny allowed the Petitioner an opportunity to address the concerns raised during the site visit and establish that a *bona fide* job offer existed. The Director also requested additional information to establish the Petitioner's ability to pay the proffered wage.

The Petitioner responded to the Director's notice on October 17, 2014, and submitted evidence to demonstrate the *bona fides* of the job offer and to establish its ability to pay the proffered wage. In response, the Petitioner submitted a copy of the Prevailing Wage Determination, copies of online and print advertisements and other recruitment efforts, an affidavit from the Beneficiary and copies of his family registry from South Korea (with certificate of translation), and copies of numerous tax records.

On January 20, 2015, the Director denied the petition. The Director determined that the Petitioner's statements made during the site visit indicated that it did not desire or intend to employ the Beneficiary at the time the petition was filed. The Director determined that fraud and willful misrepresentation of a material fact involving the labor certification had occurred and invalidated the labor certification pursuant to 20 C.F.R. § 656.30(d).

II. LAW AND ANALYSIS

A United States employer may sponsor a foreign national for lawful permanent residence, which is a three part process. First, the U.S. employer must obtain a labor certification, which the DOL processes. *See* 20 C.F.R. § 656, *et seq*. The labor certification states the position's job duties and the position's education, experience and other special requirements along with the required proffered wage and work location(s). The beneficiary states and attests to his or her education and experience. DOL's role in certifying the labor certification is set forth at section 212(a)(5)(A)(i) of the Act. DOL's certification affirms that, "there are not sufficient [U.S.] workers who are able, willing, qualified" to perform the position offered where the beneficiary will be employed, and that employment of such beneficiary will not "adversely affect the wages and working conditions of workers in the United States similarly employed." *See* INA § 212(a)(5)(A)(i).

Following labor certification approval, a petitioner files Form I-140, Immigrant Petition for Alien Worker, with USCIS within the required 180 day labor certification validity period. *See* 20 C.F.R. § 656.30(b)(1); 8 C.F.R. § 204.5. USCIS then examines whether: the petitioner can establish its ability to pay the proffered wage, the petition meets the requirements for the requested classification,

and the beneficiary has the required education, training, and experience for the position offered. *See* INA § 203(b)(3)(A)(ii); 8 C.F.R. § 204.5.[3]

As noted above, the I-140 petition is accompanied by a labor certification, approved by DOL, and with a priority date of December 27, 2010.

A. Invalidation of the Labor Certification

The Director invalidated the labor certification and denied the petition after concluding that the record did not establish that the Petitioner had extended a valid full-time offer of employment to the Beneficiary. The regulation at 20 C.F.R. § 656.30(d) provides:

> (d) Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the CO or to the Chief, Division of Foreign Labor Certification, the CO, or the Chief of the Division of Foreign Labor Certification, as appropriate, shall notify in writing the DHS or Department of State, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

A material issue in this case is whether a valid full-time job offer exists with the Petitioner and was available to qualified United States citizens. Willful misrepresentation of a material fact in these proceedings may render the Beneficiary inadmissible to the United States, unless the Petitioner is able to overcome the findings of the investigation. *See* INA § 212(a)(6)(C), [8 U.S.C. § 1182(a)(6)(C)], regarding misrepresentation, "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible."

The Director states in his decision that the Petitioner's statements to USCIS officers, specifically that she hired the Beneficiary to help him out because they were friends and that the Beneficiary was working part-time during the school year months and full-time during the summer, did not convince him that a *bona fide* job offer existed.

[3] In the final step, the beneficiary would file an I-485, Application to Adjust Status or Register Permanent Residence, either concurrently with the I-140 petition based on a current priority date, or following approval of an I-140 petition and a current priority date. *See* 8 C.F.R. § 245.

A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 2000-INA-93 (BALCA May 15, 2000). However, in this case the Beneficiary has affirmed that no ownership or familial relationship existed between himself and the company owner. The Beneficiary attested in an affidavit that he only became acquainted with the Petitioner when his child attended her school. The Petitioner submitted copies of its recruitment advertisements in three different online and print publications. Finally, the Petitioner submitted a letter from , certifying that it had tested the labor market and found no qualified or interested U.S. workers. Therefore, we find that the record does not establish that the Petitioner willfully misrepresented that a *bona fide* job offer existed. This portion of the Director's decision is withdrawn and the labor certification is reinstated.

B. The *Bona Fides* of the Job Offer

The Petitioner must establish that its job offer to the Beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, the Petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the Beneficiary obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977).

In this case, the Petitioner seeks to employ the Beneficiary as an instructional coordinator. On February 8, 2016, we issued a notice of intent to dismiss (NOID) the appeal and requested evidence demonstrating that the proffered position of instructional coordinator is full-time, 40 hours per week, year-round. Specifically, we requested that the Petitioner provide documentation of its hours of operation year-round, a complete listing of employees with job titles and descriptions, and evidence to establish that the company maintains a *bona fide* and realistic need to employ a full-time instructional coordinator.

In response to our NOID, the Petitioner provided information showing its summer school hours as 7:30AM-6:30PM and its school-day hours as 12:00PM-7:00PM, as well as a daily schedules for school-year and summer sessions. The Petitioner also provided a list of its employees, including two teachers, a head teacher, and its director. The Petitioner states that the Beneficiary will expand the school's computer science courses. The Petitioner has demonstrated by a preponderance of the evidence its intent to employ the Beneficiary full-time in the offered position of instructional coordinator. Therefore, the Petitioner has demonstrated that a continuing *bona fide* job offer exists.

C. Company Ownership

A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). In our NOID we notified the Petitioner of inconsistencies and discrepancies in the record regarding its ownership and continued business operation. Specifically, we noted that signed both the labor certification and Form I-140 in 2011, as the Petitioner's

director. [redacted] also signed a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, on behalf of the Petitioner on February 9, 2015. However, in conjunction with the appeal of another petition filed by the Petitioner, the beneficiary of that petition stated that the company was under new ownership as of December 2013. We further noted that the Petitioner's State of California, Employment Development Department, Form DE 9C, Quarterly Contribution Return and Report of Wages, do not list [redacted] as an employee at any time from January 1, 2010, through June 30, 2014. We specifically requested that the Petitioner submit evidence to explain how [redacted] was authorized to sign the Form G-28 on February 9, 2015, and of [redacted] specific role with the Petitioner.

Our NOID also noted that the Petitioner's IRS Forms 990, Return of Organization Exempt From Income Tax, for 2009 through 2013 list [redacted] as the company Chief Executive Officer (CEO), while public records list [redacted] as CEO of the Petitioner. The California Secretary of State website lists [redacted] as the company agent.[5] We asked the Petitioner to submit its most recent tax documentation to verify the company's continued existence. We also requested evidence to establish the current ownership of the petitioning company and specified that if the ownership or tax identification number has changed since the labor certification was submitted on December 27, 2010, the Petitioner must submit evidence of successorship.[6]

In response to our NOID, the Petitioner submitted a letter dated March 1, 2016, from [redacted] who identified herself as the Petitioner's owner. [redacted] stated that [redacted] "was authorized to sign the documents submitted with the USCIS in February 2015. At the time the documents were signed, [the Petitioner] was still in the process of transferring ownership."

Evidence of transfer of ownership must show that the successor not only purchased assets from the predecessor, but also the essential rights and obligations of the predecessor necessary to carry on the business. To ensure that the job opportunity remains the same as originally certified, the successor must continue to operate the same type of business as the predecessor, in the same metropolitan statistical area and the essential business functions must remain substantially the same as before the ownership transfer. *See Matter of Dial Auto*, 19 I&N Dec. at 482. However, despite our request for specific evidence relating to the sale of the petitioning business, the Petitioner did not provide any evidence of the details of the transfer of ownership.

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[4] During the site visit, USCIS officers confirmed through ID and signature comparisons that [redacted] and [redacted] are one and the same person.

[5] California Secretary of State Business Search, http://kepler.ss.ca.gov/ (accessed February 1, 2016).

[6] Considering *Matter of Dial Auto*, a petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the beneficiary's predecessor employer. Second, the petitioning successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The Petitioner has the burden of proof to establish eligibility for the requested immigration benefit. *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner must resolve the inconsistencies and discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The Petitioner has not resolved the inconsistencies and discrepancies with independent, objective evidence pointing to where the truth lies. *Id.* The Petitioner's response is not supported by any of the specific evidence requested to document the change in ownership of the petitioning company. The Petitioner cannot meet the burden of proof simply by claiming a fact to be true, without supporting documentary evidence. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support assertions with relevant, probative, and credible evidence. *Id.*

D. Ability to Pay the Proffered Wage

Our NOID also notified the Petitioner that the record did not establish its ability to pay the proffered wage of $36,525 per year, as of the December 27, 2010 priority date. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

A petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). A petitioner must also demonstrate that, on the priority date, a beneficiary had the qualifications stated on its ETA Form 9089 as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

The record indicates the Petitioner is structured as a nonprofit corporation and filed its tax returns on IRS Form 990, Return of Organization Exempt from Income Tax. On the petition, the Petitioner claimed to have been established on January 1, 1999, and to currently employ nine workers. On the ETA Form 9089, signed by the Beneficiary on March 1, 2011, the Beneficiary did not claim to have worked for the Petitioner; however, the Petitioner later submitted copies of IRS Form W-2, Wage and Tax Statements, it issued to the Beneficiary in 2011, 2012, and 2013.

The Petitioner must establish that its job offer to the Beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, the Petitioner must establish that the job offer was

realistic as of the priority date and that the offer remained realistic for each year thereafter, until the Beneficiary obtains lawful permanent residence. The Petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires a petitioner to demonstrate financial resources sufficient to pay a beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the Petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the Petitioner employed and paid the Beneficiary during that period. If the Petitioner establishes by documentary evidence that it employed the Beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the Petitioner's ability to pay the proffered wage. In the instant case, IRS Forms W-2 reveal that the Petitioner paid the Beneficiary $15,500 in 2011, $37,200 in 2012, and $12,400 in 2013.

The Petitioner established that it employed and paid the Beneficiary the full proffered wage in 2012, and partial wages in 2011 and 2013. Since the proffered wage is $36,525 per year, the Petitioner must establish that in the remaining years it can pay the difference between the wages actually paid to the Beneficiary and the proffered wage, that is:

2010	$36,525
2011	$21,025
2013	$24,125
2014	$36,525

If a petitioner does not establish that it employed and paid a beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income[7] figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th

[7] A nonprofit organization issues a statement of activities (income statement). The statement of activities reports revenues and expenses according to three classifications of net assets: unrestricted net assets, temporarily restricted net assets and permanently restricted net assets. The statement of activities explains how net assets changed from one date to another. Net assets generally increase when revenues are recorded and decrease when expenses are recorded. *See* "How to Assess Nonprofit Financial Performance" by Elizabeth K. Keating, CPA, Assistant Professor of Accounting and Information Systems, Northwestern University, and Peter Frumkin, Assistant Professor of Public Policy, Harvard University, available at http://www.nasaa-arts.org/Learning-Services/Past-Meetings/Reading-5-Understanding-Financial-Statements.pdf (accessed March 28, 2016). In a for-profit business, revenues minus expenses is called net income. In a nonprofit organization, the change in net assets is a surplus or deficit that is carried forward.

Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on a petitioner's wage expense is misplaced. Showing that a petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

Line 19 of IRS Form 990 lists an organization's "Revenue less expenses." The Petitioner's tax returns reveal the following:

Year	Revenue less expenses
2010	-$27,823
2011	-$7,685
2013	-$19,607
2014	$24,807

Therefore, for the years 2010, 2011, 2013, and 2014 the Petitioner did not establish that it had sufficient net revenues to pay the difference between the proffered wage and the wages actually paid to the Beneficiary.

If the net revenues a petitioner demonstrates it had available during that period, if any, added to the wages paid to a beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets. Net current assets are the difference between a petitioner's current assets and current liabilities.[8] If the total of a corporation's end-of-year net current assets and the wages paid to a beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

Part X of IRS Form 990 provides the organization's balance sheet. The organization's assets and liabilities are listed in order of their liquidity or maturity. However, Part X of IRS Form 990 does not indicate which assets and liabilities are current. Therefore, the information contained in Part X of IRS Form 990 is not sufficient to establish a petitioner's ability to pay the proffered wage. Accordingly, our February 8, 2016, NOID requested additional evidence including audited Statements of Financial

[8] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Position or balance sheets to establish the Petitioner's net current assets. In response to our NOID, the Petitioner submitted updated copies of its tax returns, but did not provide any evidence of its net current assets.

Therefore, for the years 2010, 2011, 2013, and 2014 the Petitioner did not establish that it had sufficient net current assets to pay the difference between the proffered wage and the wages actually paid to the Beneficiary.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

While the Petitioner's total revenues show a moderate decline from $248,298 in 2010 to $245,764 in 2014, its payroll fell significantly from $96,160 to just $54,317 during the same period. Unlike the petitioner in *Sonegawa*, the instant Petitioner has not established the historical growth of its business or its reputation within its industry, nor has it claimed the occurrence of any uncharacteristic business expenditures or losses during the years in question. Also unlike the petitioner in *Sonegawa*, the instant Petitioner has filed an employment-based immigrant petition on behalf of another beneficiary and, despite our specific request in our NOID, has submitted no evidence of its ability to pay the proffered wage to that beneficiary.[9] The Petitioner did not demonstrate its ability to pay the

[9] The Petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977). Our NOID specifically requested that the Petitioner provide the priority date, proffered wage, or wages paid to this other beneficiary, whether the other petition has been withdrawn, revoked, or denied, or whether the

proffered wages to the Beneficiary by means of its net income or net current assets from the priority date or subsequently. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the Petitioner has not established that it had the continuing ability to pay the proffered wage from the priority date onwards.

III. CONCLUSION

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

FURTHER ORDER: The ETA Form 9089, case number , is reinstated.

Cite as *Matter of UCE-C-*, ID# 13696 (AAO Apr. 4, 2016)

other beneficiary has obtained lawful permanent residence. The Petitioner did not provide any information about the beneficiary of its other petition.